

# EXHIBIT 8

1

D45CBANC Conference

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: BANK OF AMERICA CORP.  
SECURITIES DERIVATIVE, AND  
EMPLOYEE RETIREMENT INCOME  
SECURITY ACT (ERISA)  
LITIGATION,

09 MD 2058 (PKC)

-----x

New York, N.Y.  
April 5, 2013  
2:15 p.m.

Before:

HON. P. KEVIN CASTEL,

District Judge

APPEARANCES

BERNSTEIN, LITOWITZ, BERGER & GROSSMANN, LLP  
Attorneys for Lead Plaintiffs

BY: MAX W. BERGER  
BY: STEVEN B. SINGER

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BY: GREGORY M. CASTALDO

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BY: ROBERT N. KAPLAN

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Attorneys for Defendants

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BY: BRAD S. KARP  
BY: AUDRA J. SOLOWAY  
BY: PIETRO SIGNORACCI  
BY: SAMSON ENZER

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4 HGT LAW  
4 Attorney for Objector  
5 BY: HUNG G. TA  
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6 Attorneys for Defendant, John Thain  
7 BY: ADAM J. WASSERMAN  
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8 Attorneys for Defendant, Kers & Co.  
9 BY: SETH ARD  
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1 the risk of litigation is something that a Court should take  
2 into account. Plaintiff's counsel took on that risk in in  
3 case. In terms of the quality of representation, the results  
4 speak to the quality of the representation, the fourth largest  
5 securities class action settlement ever. And it qualifies as  
6 first in several respects.

7 I also note that the defendants in this case were  
8 represented by the finest lawyers, really, that there are in  
9 this nation. Cleary Gottlieb firm. Paul Weiss. Wachtel  
10 Lipton, Debavois, Davis Poke, Baker and Pots, Deckert, all  
11 representing the defendants in this case. And that is a factor  
12 that one takes account in determining appropriateness of the  
13 settlement amount. I've looked at the, and already commented  
14 on the relationship of the fee amount to the amount of the  
15 settlement. Again, abstract numbers, it's a big number, but  
16 not in terms of the overall settlement. Public policy  
17 considerations, securities class action claims deserve to be  
18 vindicated. They have a salutary effect and rewarding  
19 attorneys that bring successful claims is appropriate. And  
20 here I get the confidence of knowing that the lead plaintiffs  
21 have approved the fee application. Have done their job of  
22 monitoring lead counsel. I've considered the reaction of the  
23 class. There have been about 10 objections that mention the  
24 fee award of the I've taken that into account, but I also have  
25 to be mindful of the utter silence of any of the institutional

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 BAREND COHEN, et al.,

5 Plaintiffs, .

6 v.

06 Civ. 3518 (AKH)

7 ESCALA GROUP, INC., et al.,

8 Defendants.

9 -----x

New York, N.Y.  
August 29, 2006  
3:15 p.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,

District Judge

12 APPEARANCES

13 LABATON SUCHAROW

Attorneys for Plaintiffs/Movants Capitalia Asset

14 Management and Baltimore Co. Employees' Retirement System

15 BY: ANDREI RADO

KAPLAN FOX & KILSHEIMER

16 Attorneys for Plaintiff/Movant Virginia Retirement System

17 BY: ROBERT N. KAPLAN

JEFFREY P. CAMPISI

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Attorneys for Plaintiff/Movant Miera Group

19 BY: AARON BRODY

20 ABRAHAM FRUCHTER & TWERSKY

Attorneys for Plaintiff/Movant Spring Partners

21 BY: JACK G. FRUCHTER

22 WOLF HALDENSTEIN ADLER FREEMAN & HERZ

Attorneys for Intervenor Plaintiff Hong Shen

23 BY: GUSTAVO BRUCKNER

24 KRAMER LEVIN NAFTALIS & FRANKEL

Attorneys for Defendant Escala Group

25 BY: STEPHEN M. SINAIKO



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1 counsel for all the other plaintiffs?

2 MR. RADO: We have no objection, your Honor, on behalf  
3 of Capitalia and Baltimore.

4 THE COURT: Is there any objection?

5 Hearing none. So your firm, which I'm familiar with  
6 and which has a fine reputation, will be lead counsel.

7 MR. KAPLAN: We prepared a proposed order that  
8 Mr. Sinaiko has looked at.

9 THE COURT: Hand it up.

10 MR. KAPLAN: I can hand it up.

11 THE COURT: Has everyone else seen it?

12 MR. KAPLAN: Mr. Sinaiko has.

13 THE COURT: Why don't you hand it up, circulate it,  
14 I'll wait a couple of days to see if there is any objection,  
15 and I'll sign it on Thursday.

16 What's going to be, Mr. Fruchter, with the derivative  
17 cases?

18 MR. FRUCHTER: The proposed structure is a colead  
19 structure --

20 THE COURT: I'm not in favor of colead structures.

21 MR. FRUCHTER: We felt, your Honor, that we could work  
22 with the Robbins firm, that there would be no overlap or  
23 duplicative effort. In fact, as your Honor can see, I'm the  
24 only one appearing today on behalf of the derivative cases.

25 THE COURT: Why don't you continue that way?

# THE AMERICAN LAWYER

AUGUST 2004

**BIG  
SUITS**

## IN RE HIGH-FRUCTOSE CORN SYRUP

A bitter nine-year battle has ended sweetly for a group of companies that buy high-fructose corn syrup. On June 17 Archer Daniels Midland Company agreed to pay \$400 million to settle a federal lawsuit accusing the company of illegally fixing the price of the sugar substitute. As many as 2,000 makers of sweetened food and beverages may divide the payment.

The money will be the most Archer Daniels has paid since government and private plaintiffs accused it in 1995 of conspiring with competitors on the prices of commodities. Archer Daniels previously pled guilty to fixing the prices of the feed additive lysine and citric acid, a sweetener, and three executives served prison time. The corn syrup buyers claimed that they had been overcharged \$1.4 billion and sought three times that amount as damages. The parties settled three months before the case was to be tried, and shortly after the judge ruled that audiotapes used against Archer Daniels in the lysine case could be played in the corn syrup case.

Archer Daniels is the fourth company to settle the corn syrup allegations. The three previous payments totaled \$31 million. Only A.E. Staley Manufacturing Company remains a defendant, and faces trial in September.


**Robert Kaplan**

**Gregory Arenson**

FOR PLAINTIFFS DELLWOOD FARMS, INC. ET AL.

**KAPLAN FOX & KILSHEIMER (NEW YORK):** Gregory Arenson and Robert Kaplan.

**MUCH SHELIST FREED DENENBERG AMENT & RUBENSTEIN (CHICAGO):** Michael Freed and Barat McClain.

**BERGER & MONTAGUE (PHILADELPHIA):** Charles Goodwin and H. Laddie Montague, Jr.

FOR DEFENDANT ARCHER DANIELS MIDLAND (DECATUR, ILLINOIS)

**IN-HOUSE:** Assistant general counsel **Jim Schafter.**

**WILLIAMS & CONNOLLY (WASHINGTON, D.C.):** Steven Kuney and John Schmidlein.

—JONATHAN MOXEY

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1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE CENTRAL DISTRICT OF ILLINOIS  
4

5 IN RE: HIGH FRUCTOSE CORN SYRUP )  
6 ANTITRUST LITIGATION )  
7 ) MDL No. 187  
8 ) Master File 95-1477  
9 THIS DOCUMENT RELATES TO: )  
10 ALL ACTIONS )  
11

12 FAIRNESS HEARING  
13

14 SEPTEMBER 3, 2004  
15 Peoria, Illinois  
16

17 BEFORE:

18 HONORABLE MICHAEL M. MIHM  
19 United States District Judge  
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22  
23 Karen S. Hanna, C.S.R.  
24 U.S. District Court Reporter  
Central District of Illinois  
25 Proceedings recorded by mechanical stenography; transcript  
produced by computer



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(Appeared on Behalf of Archer Daniels Midland Company)

1 THE COURT: Good afternoon. This is the case of  
2 In Re High Fructose Corn Syrup Anti-Trust Litigation,  
3 master file number 95-1477. Plaintiffs are here  
4 represented by Greg Arenson and Michael Waters. Defendant  
5 ADM is represented by Steve Kuney and David Mueller.

6 The matter is set today for what we call a  
7 fairness hearing to determine whether the proposed  
8 settlement between these parties is fair and reasonable as  
9 to the members of the class. Mr. Arenson, do you have a  
10 presentation to make?

11 MR. ARENSON: I do have a short presentation,  
12 Your Honor. First I would like to outline the basic terms  
13 of the settlement that is proposed here. There is payment  
14 by ADM of \$400 million to the class.

15 THE COURT: And that payment has already  
16 occurred into an escrow fund?

17 MR. ARENSON: Yes, Your Honor, paid into three  
18 escrow funds and as of August 31 the amount of interest on  
19 that was \$610,342.28.

20 ADM does not admit to any wrongdoing, that is an  
21 element of the settlement, and there will be a release of  
22 ADM by all class members as part of the settlement of all  
23 claims that were asserted or could have been asserted in  
24 this action.

25 The settlement was reached with the heavy

1 Everything about this case has been fully  
2 litigated. I have commented on other occasions that the  
3 quality of the attorneys in this case is outstanding.  
4 There aren't too many secrets left in this discovery, but  
5 that doesn't answer the question of what a jury would do  
6 with it. As Professor Wolak indicated, I think the bottom  
7 line on the assessment of the expert testimony would  
8 depend on how the jury resolved the disputed factual  
9 issues that would act as the foundation for the  
10 methodology that was used by the experts in their  
11 opinions.

12 So all these five factors, I think, have been  
13 fully addressed by Mr. Arenson. I agree completely with  
14 his assessment. There is certainly nothing in the  
15 dynamics of this situation that would indicate that this  
16 was anything other than a complete arms' length  
17 negotiation and transaction.

18 I might also add parenthetically that I do think  
19 it is very significant that there would be two juries  
20 sitting here during the liability phase of the case. As  
21 Judge Posner indicated in his opinion concerning this  
22 matter -- I think he made reference to one other case from  
23 Colorado from a long time ago that I don't think was  
24 particularly a major case -- but this would have created  
25 an equation that, again, it would be hard for counsel to

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE CENTRAL DISTRICT OF ILLINOIS

3  
4           IN RE:   HIGH FRUCTOSE CORN SYRUP       )  
5                   ANTITRUST LITIGATION            )  
6    ) MDL No. 187  
7    ) Master File 95-1477  
8           THIS DOCUMENT RELATES TO:        )  
9           ALL ACTIONS                        )

10                   TRANSCRIPT OF PROCEEDINGS

11  
12  
13                   OCTOBER 4, 2004  
14                   Peoria, Illinois

15  
16                   BEFORE:

17                   HONORABLE MICHAEL M. MIHM  
18                   United States District Judge

19  
20  
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22  
23                   Karen S. Hanna, C.S.R.  
24                   U.S. District Court Reporter  
25                   Central District of Illinois  
                  Proceedings recorded by mechanical stenography; transcript  
                  produced by computer



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(Appeared on Behalf of A.E. Staley Manufacturing Co.)

1 THE COURT: Welcome back one last time.

2 MR. ARENSON: We're glad to be here, Your Honor.

3 THE COURT: The matter is set today for multiple  
4 reasons. The first matter that I want to address is the  
5 fairness hearing. The Court previously provided  
6 preliminary approval for the settlement on July 28 and  
7 approved form of notice that was sent to the class by  
8 mailing and publication. Do plaintiffs' counsel have a  
9 presentation to make on the fairness portion?

10 MR. FREED: We do, Your Honor. Good morning,  
11 Your Honor. Michael Freed for the plaintiffs. As Your  
12 Honor knows, the Seventh Circuit has issued an opinion  
13 which requires the Court to consider five factors in  
14 making a determination on whether to grant final approval  
15 to a settlement. Because of that, while I think the Court  
16 is exceptionally well versed about our case and where the  
17 case stood at the point of the settlement and where the  
18 settlement fit in the scheme of things, I will address  
19 each of the five points so that we have a complete record.

20 THE COURT: Thank you.

21 MR. FREED: The first point under Rule  
22 23(e)(1)(C) is the strength of our case compared to the  
23 amount of the defendant's settlement offer. In this  
24 regard, I would make several observations.

25 First, the settlement took place over a very,

1 I don't know that really anyone could say for  
2 certain how the Court's expert would really play out at  
3 the trial. I agree with you that there was some  
4 indications in the deposition that his testimony might be  
5 more helpful to the plaintiffs, but I'm not sure that it  
6 would necessarily play out that way at trial. In any  
7 event, the risks were substantial.

8 What was left in this case by the time that  
9 Staley settled was the trial itself. Having said that,  
10 still in terms of complexity, length and expense of  
11 litigation, we're talking about very substantial issues.  
12 We're talking about a trial that was going to last  
13 anywhere from two to four months at tremendous cost to the  
14 parties, plus a trial that long is hard on everyone.

15 The settlement. As I said, no opposition. It's  
16 unusual that there isn't even one letter in opposition.

17 The opinion of competent counsel. I respect  
18 their opinion greatly. I have no reason to think that,  
19 based on everything I know of in this case, that this  
20 matter wasn't settled completely on an arms' length basis  
21 and that the plaintiffs' counsel aggressively represented  
22 the class in the settlement negotiations.

23 And as was just said recently, at the stage we  
24 were, I think to the extent anyone could know everything  
25 about a case before it goes to trial, that was true in

1 one moment? I had sent in a revised order and I have a  
2 copy if that would be preferred.

3 THE COURT: That would be very good. Thank you.

4 MR. ARENSEN: Good morning, Your Honor. Greg  
5 Arenson to talk about the application of plaintiffs'  
6 counsel for attorneys' fees of 25 percent of the  
7 settlements and also for reimbursement of expenses of  
8 \$5,408,017.37. First I think we should talk about the  
9 fees and then we can move on to the expenses later on.

10 THE COURT: I'll tell you right now, I don't  
11 have any issues about the expenses.

12 MR. ARENSEN: Very good. In that case we'll  
13 just focus on the fees to start with.

14 The standard was set out in Synthroid I. Courts  
15 must do their best to award counsel the market price for  
16 legal services in light of the risk of nonpayment and the  
17 normal rate of compensation in the market at the outset of  
18 the case.

19 So the question becomes how does the Court  
20 determine what the market was at the outset of the case  
21 and what proof or evidence should the Court consider. One  
22 of the items, in fact the main item in the Synthroid  
23 cases, at least at the Seventh Circuit level, were the  
24 actual agreements and the Court said about that in both  
25 cases that the rate for legal services is set by informed



1 THE COURT: I have no intention of considering  
2 his separately. So we'll be in recess for ten minutes.

3 (Recess taken)

4 THE COURT: I think perhaps the percentage of  
5 fees that you were entitled to probably went up some this  
6 morning based on our conversation. I'm not going to keep  
7 you in suspense. I am going to approve the 25 percent,  
8 but I think you can gather from my comments I'm very  
9 unhappy about this. And this has nothing to do with you.  
10 I've said many times during this litigation that you and  
11 the attorneys who represented the defendants here are as  
12 good as it gets. Very professional. At least in my  
13 presence or in my contacts with you, you've always been  
14 civil. You've always been cutting to the chase and not  
15 wasting my time or each other's time or adding to the cost  
16 of the litigation.

17 And this was very difficult litigation. You  
18 know, I think it's unfortunate that the Seventh Circuit  
19 has so casually dismissed the factors that are discussed  
20 in the Cendant case because those factors are all very  
21 much in your ballpark and they support a very high request  
22 for fees. I just want to take a minute here and go  
23 through a few things.

24 First of all, the size of the fund created, the  
25 number of persons benefitted. The fund is very large.